

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: State Water Resources Control Board.

(1) The California Constitution declares that the general welfare of the state requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the right to the use of water does not extend to the waste or unreasonable use, method of use, or method of diversion of water. Existing law requires the State Water Resources Control Board to take all appropriate proceedings or actions to prevent waste, unreasonable, use, unreasonable method of use, or unreasonable method of diversion of water in this state. Existing law states the intent of the Legislature that the state take vigorous action to enforce the terms and conditions of permits, licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.



This bill would, commencing January 1, 2016, require a person who diverts 10 acre-feet of water per year or more under a permit or license to install and maintain a device capable of measuring the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage, as specified, and would require the permittee or licensee to maintain a record of all diversion monitoring and the total amount of water diverted and submit these records to the board, as prescribed. This bill would require a person who diverts water under a registration, permit, or license to report to the board, at least annually. This bill would authorize the board to adopt emergency regulations requiring measurement and reporting of water diversion and use by specified persons and would require that any emergency regulations or amendments to those regulations remain in effect until revised by the board. This bill would exempt from the California Environmental Quality Act the adoption of certain regulations by the board.

(2) Existing law authorizes a person or entity in violation of a term or condition of a permit, license, certificate, or registration issued by, an order adopted by, or certain emergency regulations adopted by, the board to be civilly liable for an amount not to exceed \$500 for each day in which the violation occurs.

This bill would expand this civil liability to any violation of any regulation adopted by the board.

Existing law makes this civil liability applicable only in a critically dry year immediately preceded by 2 or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency based on drought conditions.



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This bill would eliminate this requirement.

(3) Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the board a statement of diversion and use, and to include specified information. Existing law requires supplemental statements of diversion and use to be filed at 3-year intervals prior to July 1 of the year next succeeding the end of each interval, and requires, if there is a change in the name or address of the person diverting water, a supplemental statement be filed with the board that includes the change. Existing law provides that the making of a material misstatement in connection with these provisions is a misdemeanor punishable as prescribed.

This bill would require supplemental statements of diversion and use to be filed annually prior to July 1, as provided. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law requires each statement of diversion and use, on and after January 1, 2012, to include monthly records of water diversions using best available technologies and best professional practices. Existing law prohibits this requirement from being construed to require the implementation of technologies or practices by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.

This bill would require each statement to include at least monthly records of water diversions and would eliminate the above-described prohibition.



(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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An act to amend Sections 1846, 5103, and 5104 of, and to add Article 3
(commencing with Section 1840) to Chapter 12 of Part 2 of Division 2
of, the Water Code, relating to water resources.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 3 (commencing with Section 1840) is added to Chapter 12 of Part 2 of Division 2 of the Water Code, to read:

Article 3. Monitoring and Reporting

1840. (a) (1) Except as provided in paragraph (2), a person who, on or after January 1, 2016, diverts 10 acre-feet of water per year or more under a permit or license shall install and maintain a device capable of measuring the rate of direct diversion, rate of collection to storage, and rate of withdrawal or release from storage. The measurements shall be made using the best available technologies and best professional practices, as defined in Section 5100, using a device and methods satisfactory to the board. The device shall be capable of continuous monitoring of the rate and quantity of water diverted and shall be properly maintained. The permittee or licensee shall provide the board with evidence that the device has been installed with the first report submitted after installation of the device. The permittee or licensee shall provide the board with evidence demonstrating that the device is functioning properly as part of the reports submitted at five-year intervals after the report documenting installation of the device, or upon request of the board. The permittee or licensee shall maintain a record of all diversion monitoring that includes the date, time, and diversion rate at time intervals of one hour or less, and the total amount of water diverted. These records shall be included with reports submitted under the permit or license, as required under subdivision (b), or upon request of the board.



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(2) The board may modify the requirements of paragraph (1) upon a finding that strict compliance is infeasible, is unreasonably expensive, would unreasonably affect public trust uses, or would result in the waste or unreasonable use of water, or upon a finding that the need for monitoring and reporting is adequately addressed by other conditions of the permit or license.

(b) At least annually, a person who diverts water under a registration, permit, or license shall report to the board the following information:

- (1) The quantity of water diverted.
- (2) The rate of diversion by months in the preceding calendar year, at a minimum.
- (3) The information required by subdivision (a), if applicable.

(c) Compliance with the applicable requirements of this section is a condition of every registration, permit, or license.

1841. (a) The board may adopt emergency regulations requiring measurement and reporting of water diversion and use by either of the following:

(1) Persons authorized to appropriate water under a permit, license, registration for small domestic, small irrigation, or livestock stockpond use, or certification for livestock stockpond use.

(2) Persons required to comply with measurement and reporting regulations pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Section 5103.

(b) Emergency regulations adopted pursuant to this section, or any amendments thereto, shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office



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of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations or amendments to those regulations adopted under this section shall remain in effect until revised by the board.

(c) The adoption of a regulation pursuant to this article is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 2. Section 1846 of the Water Code is amended to read:

1846. (a) A person or entity may be liable for a violation of any of the following in an amount not to exceed five hundred dollars (\$500) for each day in which the violation occurs:

(1) A term or condition of a permit, license, certificate, or registration issued under this division.

(2) A regulation adopted by the board under Section 1058.5 or an order adopted by the board.

(b) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(c) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(d) In determining the appropriate amount of civil liability, the court, pursuant to subdivision (b), or the board, pursuant to subdivision (c), may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by



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the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(e) No liability shall be recoverable under this section for any violation for which liability is recovered under Section 1052.

(f) All funds recovered pursuant to this section shall be deposited in the Water Rights Fund established pursuant to Section 1550.

~~(g) This section applies only in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years or during a period for which the Governor has issued a proclamation of a state of emergency under the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code) based on drought conditions.~~

SEC. 3. Section 5103 of the Water Code is amended to read:

5103. Each statement shall be prepared on a form provided by the board. The statement shall include all of the following information:

(a) The name and address of the person who diverted water and of the person filing the statement.

(b) The name of the stream or other source from which water was diverted, and the name of the next major stream or other body of water to which the source is tributary.

(c) The place of diversion. The location of the diversion works shall be depicted on a specific United States Geological Survey topographic map, or shall be identified using the California Coordinate System, or latitude and longitude measurements. If



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assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) ~~On and after January 1, 2012, monthly~~ (A) At least monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. ~~Nothing in this paragraph shall be construed to require the implementation of technologies or practices by a person who provides to the board documentation demonstrating that the implementation of those practices is not locally cost effective.~~

(B) On and after July 1, 2016, the measurement of a diversion of 10 acre-feet or more per year shall comply with regulations adopted by the board pursuant to Article 3 (commencing with Section 1840) of Chapter 12 of Part 2.

(2) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).



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(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) The purpose of use.

(g) A general description of the area in which the water was used. The location of the place of use shall be depicted on a specific United States Geological Survey topographic map and on any other maps with identifiable landmarks. If assigned, the public land description to the nearest 40-acre subdivision and the assessor's parcel number shall also be provided.

(h) The year in which the diversion was commenced as near as is known.

SEC. 4. Section 5104 of the Water Code is amended to read:

5104. (a) Supplemental statements shall be filed ~~at three-year intervals, prior to annually, before July 1 of the each year next succeeding the end of each three-year interval.~~ They shall contain the quantity of water diverted and the rate of diversion by months in each of the preceding three calendar years year and any change in the other information contained in the preceding statement.

(b) If there is a change in the name or address of the person diverting the water, a supplemental statement shall be filed with the board that includes the change in name or address.

(c) A supplemental statement filed prior to July 1, 2016, shall include data satisfying the requirements of subdivision (a) for any diversion of water in the 2012.



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2013, and 2014 calendar years, that was not reported in a supplemental statement submitted prior to July 1, 2015.

(d) This section does not limit the authority of the board to require additional information or more frequent reporting under any other law.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

